

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

The Obria Group Inc. and Vita Nuova Inc., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Alex M. Azar II, in his official capacity as Secretary of Health and Human Services; **United States of America**,

Defendants.

Case No. 4:19-cv-00532-O

RULE 26(f) REPORT

The counsel identified below participated in the meeting required by Fed. R. Civ. P. 26(f) on December 16, 2020, and have prepared the following report.

DESCRIPTION OF CASE

42 U.S.C. § 300a-7(c) prohibits discrimination by entities receiving certain grants, contracts, and loans based on religious beliefs or moral convictions regarding sterilization procedures, abortion, or, more generally, health services or research activities. This subsection forms part of 42 U.S.C. § 300a-7, which more generally includes discrimination based on an individual's performance (or assistance in) such a procedure or activity, an individual's refusal to perform (or assist in) such a procedure or activity, and an individual's religious beliefs or moral convictions about such procedures more generally. 42 U.S.C. § 300a-7. The plaintiffs in this class action contend that the portion of 42 U.S.C. § 300a-7(c) that prevents discrimination against individuals who perform or assist in the performance of abortions is inconsistent with the Religious Freedom Restoration Act.

DISCOVERY PLAN

The parties have agreed to dispense with initial disclosures under Rule 26(a).

The parties expect that discovery in this matter will be limited. The plaintiffs do not currently intend to seek discovery, and the defendants intend to seek discovery limited to the plaintiff's standing and the suitability of this case for resolution on a class-wide basis.

The parties agree that the inadvertent-production principles and procedures of Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502(b) should apply to this case. The parties also agree that if a privilege or trial-preparation protection is asserted with respect to any information, document, or other material responsive to a proper discovery request, then the party asserting the privilege shall specify the legal basis for the assertion in a privilege log consistent with Fed. R. Civ. P. 26(b)(5)(A), to be served within thirty (30) days after the assertion.

The parties do not intend to ask for changes in the discovery limits imposed by the federal rules of civil procedure or by local rule, and they see no need to ask the Court for protective orders under Rule 26(c) at this time.

PROPOSED SCHEDULE

The parties propose the following schedule:

The deadline to amend the pleadings will be **March 1, 2021**.

Discovery will close on **April 2, 2021**. The defendants reserve the right to seek an extension of the discovery deadline in the event that the plaintiffs are granted leave to amend their complaint a fourth time, and the amendment significantly alters the existing claims in the case or adds plaintiffs.

The defendants will file their response to the motion for summary judgment that plaintiff Vita Nuova filed on June 30, 2020, and/or their cross-motion for summary judgment, by **April 23, 2021**.

The plaintiffs will file their reply brief in support of summary judgment, and/or their response to the defendants' cross-motion for summary judgment, by **May 14, 2021.**

The defendants will file their reply brief in support of summary judgment by **May 28, 2021.**

The parties agree that the possibility of settlement is remote or unlikely. The parties also believe that this case is unlikely to go to trial and expect the case to be resolved on dispositive motions. The parties therefore believe it unnecessary to set a trial date at this time.

Respectfully submitted.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

*Counsel for Plaintiffs and
the Certified Class*

/s/ Bradley P. Humphreys
BRADLEY P. HUMPHREYS
D.C. Bar No. 988057
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
(202) 305-0878 (phone)
(202) 616-8470 (fax)
bradley.humphreys@usdoj.gov

Counsel for Defendants

Dated: December 18, 2020

CERTIFICATE OF SERVICE

I certify that on December 18, 2020, I served this document through CM/ECF upon:

BRADLEY P. HUMPHREYS
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
(202) 305-0878 (phone)
(202) 616-8470 (fax)
bradley.humphreys@usdoj.gov

DANIEL RIESS
U.S. Department of Justice
Civil Division
1100 L Street, NW
Washington, D.C. 20005
(202) 353-3098 (phone)
(202) 616-8460 (fax)
daniel.riess@usdoj.gov

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Certified Class*